

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 981 Agriculture
SPONSOR(S): General Government Policy Council, Natural Resources Appropriations Committee,
Agriculture and Natural Resources Policy Committee, Grimsley
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture & Natural Resources Policy Committee	10 Y, 0 N, As CS	Cunningham	Reese
2) Natural Resources Appropriations Committee	9 Y, 0 N, As CS	Bellflower	Dixon
3) General Government Policy Council	15 Y, 0 N, As CS	Cunningham	Hamby
4) House Vote on Final Passage	112 y, 1 N		
5)			

SUMMARY ANALYSIS

The bill states that offering property for sale does not constitute a primary use of the land and may not be the basis for denying classification as agricultural land if the land continues to be used primarily for bona fide agricultural purposes while it is being offered for sale. The bill also provides that structures or improvements used in horticultural production for frost or freeze protection that are consistent with the Department of Agriculture and Consumer Services' (DACS) adopted interim measures or best management practices shall be assessed by the methodology required for the assessment of land used for agricultural purposes. The bill provides for these revisions in law to be remedial and clarifying in nature and applied retroactively to all parcels for which a final court order has not been entered as of the effective date of this act.

The bill authorizes the Department of Environmental Protection (DEP) to develop and implement a general permit to allow application of pesticides for the control of insects, aquatic weeds, algae, or other pests over the waters of the state. The bill requires the DEP to enter into agreements with the Fish and Wildlife Conservation Commission (FWCC) and the DACS to ensure uniform regulation of pesticides applied to the waters of the state. The bill also requires the DACS to meet with representatives of the state's pest control industry and submit a report to the Legislature by January 1, 2011, recommending amendments to ch. 482, F.S., that provide for disciplinary actions to be taken against licensees who violate certain laws or rules pertaining to pesticide use.

The bill provides that the Citrus Research and Development Foundation, Inc.¹ (Foundation), a direct support organization of the University of Florida, shall serve as the advisory council for a citrus research marketing order. The foundation is responsible for providing advice on administering the order to the DACS, conducting citrus research and performing other duties assigned by the DACS. The foundation's board of trustees shall be composed of 13 members, including 10 citrus growers, two representatives from the University of Florida's Institute of Food and Agricultural Sciences, and one member appointed by the Commissioner of Agriculture. The bill also expands the types of research recommended by the Foundation that may be conducted by the DACS.

The bill provides for the collection of agricultural assessments used to defray costs associated with marketing orders to be deposited in "the appropriate trust fund" rather than the General Inspection Trust Fund as required by current law. The bill replaces the one cent cap on assessment imposed on citrus fruit with a requirement that the rate not exceed the rate established by the research marketing order. In November 2009, the citrus industry voted in favor of the self-imposed assessment and in favor of increasing the assessment cap to three cents per box. If the rate is set at the maximum of three cents per box, approximately \$3,000,000 annually would be deposited into the appropriate trust fund, assuming a full year application of the law.

Finally, the bill moves the executive offices of the Department of Citrus from Lakeland to Bartow.

The bill has an effective date of July 1, 2010.

¹ Established pursuant to s. 1004.28, F.S.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Land Classification

Present Situation

With limited exceptions, the Florida Constitution (s. 4, Art. VII) requires the government to obtain a just valuation of property subject to ad valorem taxation (property taxes). Florida courts have consistently defined just valuation as fair market value. An exception is provided for agricultural land, which the constitution allows to be "classified by general law and assessed solely on the basis of character or use." Only lands which are used primarily for bona fide agricultural purposes may be classified agricultural. "Bona fide agricultural purposes" means good faith commercial agricultural use of the land. The law (s. 193.461(5), F.S.) defines "agricultural purposes" to include, but not limited to: horticulture; floriculture; viticulture; forestry; dairy; livestock; poultry; bee; pisciculture, when the land is used principally for the production of tropical fish; aquaculture; sod farming; all forms of farm products and farm production. In determining whether the use of the land for agricultural purposes is bona fide, the following factors may be taken into consideration:

- The length of time the land has been so used.
- Whether the use has been continuous.
- The purchase price paid.
- Size, as it relates to specific agricultural use, but in no event is a minimum acreage to be required for agricultural assessment.
- Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including, without limitation, fertilizing, liming, tilling, mowing, reforestation, and other accepted agricultural practices.
- Whether such land is under lease and, if so, the effective length, terms, and conditions of the lease.
- Such other factors that may from time to time become applicable.

Section 193.461, F.S., also provides that the sale of land for a purchase price which is three or more times the agricultural assessment placed on the land creates a presumption that such land is not used primarily for bona fide agricultural purposes. However, upon a showing of special circumstances by the landowner demonstrating that the land is to be continued in bona fide agriculture, this presumption can be rebutted.

In January 2008, a Final Judgment was issued by the Circuit Court of the 8th Judicial Circuit in and for Bradford County, Florida, that denied an agricultural classification for certain properties that had been transferred to a wholly-owned real estate company at an assigned value greater than three times the appraised value. The court held that the land was being used before and after the purchase for a bona fide agricultural purpose, a timber operation. Finding the primary purpose of the real estate company was the sale and marketing of land that has been identified as having a higher and better use, the court ruled that the bona fide agricultural practices were secondary to the primary purpose of marketing the land. In November 2009, the First District Court of Appeal affirmed the Circuit Court's decision by filing a Per Curiam Opinion.

Beyond application to the specific circumstances addressed by the case, the opinion created concerns it could be interpreted contrary to previous case law and allow properties that are being offered for sale but not sold to lose their agricultural classification even though the land continued to be used for a bona fide agricultural purpose.

Effect of Bill

The bill states that offering property for sale does not constitute a primary use of the land and may not be the basis for denying classification as agricultural land if the land continues to be used primarily for bona fide agricultural purposes while it is being offered for sale. The bill also provides that structures or improvements used in horticultural production for frost or freeze protection that are consistent with the Department of Agriculture and Consumer Services' (DACS) adopted interim measures or best management practices shall be assessed by the methodology required for the assessment of land used for agricultural purposes. The bill provides for these revisions in law to be remedial and clarifying in nature and applied retroactively to all parcels for which a final court order has not been entered as of the effective date of this act.

The bill only pertains to the offering of property for sale by the current owner and not to an actual sale. The bill would protect farmers and other land owners who choose to offer their property for sale from losing their agricultural classification based solely on the act of offering their property for sale and having to pay higher property taxes even though the land continues to be used primarily for a bona fide agricultural purpose.

Pesticide Regulation

Present Situation

In January 2009, the U.S. Sixth Circuit Court of Appeals (Cincinnati) ruled that Clean Water Act permits are required for all biological pesticide applications and chemical pesticide applications that leave a residue in water when such applications are made in or over, including near, waters of the United States. The U.S. Environmental Protection Agency (USEPA) was granted a stay of this decision that expires April 2011. In February 2010, the Supreme Court declined to grant a rehearing of this decision. Certain delegated states that do not have a general permit in place are authorized to develop their own general permit in coordination with the USEPA. Therefore, after April 2011, pesticide applications necessary for aquatic weed control will be required to have a National Pollutant Discharge Elimination System (NPDES) permit before applications can be made. Failure to comply will be a violation of the Clean Water Act. Currently, the DACS is responsible for regulating pest control. USEPA delegates authority to DEP to enforce the provisions of the Clean Air Act.

Effect of Bill

The bill amends s. 403.088, F.S., providing the Department of Environmental Protection (DEP) with clear authority to develop and implement a general permit to allow application of pesticides for the control of insects, aquatic weeds, algae, or other pests. The bill also amends ss. 369.20 and 487.163, F.S., to provide that the Fish and Wildlife Conservation Commission (FWCC) may and the DACS must enter into agreements with the DEP to ensure uniform regulation of pesticides applied to the waters of the state. The bill also requires the DACS to meet with representatives of the state's pest control industry and submit a report to the Legislature by January 1, 2011, recommending amendments to ch.

482, F.S., that provide for disciplinary action to be taken against licensees who violate laws or rules pertaining to:

- The pretreatment of soil to protect newly constructed homes;
- Pest control at sensitive facilities such as schools and nursing homes; and
- The fumigation of existing homes for protection against termite damage.

The report may also address other issues of concern to the DACS and to members of the industry, such as:

- Changes to requirements for professional liability insurance coverage or the amount of bond required;
- Duties and responsibilities of a certified operator;
- Issuance of a centralized pest control service center license; and
- Limited certification for commercial wildlife management personnel.

Citrus Research

Present Situation

Many challenges, from weather to disease, face Florida's citrus growers. Recent freezes in Florida cost Florida an estimated 7.4 million boxes of fruit. Huanglongbing (HLB), also known as citrus greening, was discovered in Florida in 2005 and can destroy existing groves and prevent commercial production of citrus cultivars. The general control strategy is to eradicate all existing sources and replant healthy trees². Wind, accompanied with heavy rains, and potential saltwater flooding, can wreak havoc on citrus crops³. The hurricanes of 2004-05 (Charley, Frances, Ivan and Jeanne), led to a four-fold increase in monthly detection of citrus canker that lasted 12 months as a result of the windblown rain⁴. Citrus canker, often spread through wind and rain, causes lesions on the fruit, defoliation of the tree, shoot die-back, and fruit drop.

In November 1991, Florida citrus growers voted to enact a citrus research order that requires a grower referendum every six years. The order established a "box tax" to help support citrus research for all growers in the state. The citrus research order covers all citrus (except limes) in the state of Florida.⁵

In a December 2009 referendum, Florida citrus growers voted to continue funding a self-imposed tax, which was increased from a maximum of one cent per box to a maximum of three cents per box, to support additional citrus research.⁶ Due to the magnitude and scope of duties and responsibilities related to the survival of the industry because of potential threats from various citrus pests and diseases, the industry recommended that a new organization be established in lieu of the Florida Citrus Production Research Advisory Council.

Currently, s. 581.031, F.S., directs the DACS to conduct, or cause to be conducted, research projects on citrus diseases, including, but not limited to, citrus canker and citrus greening, which are recommended by the Florida Citrus Production Research Advisory Council, within limits of appropriations made specifically for this purpose.

Effect of Bill

The bill provides that the Citrus Research and Development Foundation, Inc. (foundation), a direct support organization of the University of Florida, shall serve as the advisory council for a citrus research marketing order, and is responsible for:

² <http://edis.ifas.ufl.edu/pp133>

³ <http://edis.ifas.ufl.edu/ch178>

⁴ http://www.ars.usda.gov/research/publications/publications.htm?SEQ_NO_115=186252

⁵ <http://www.florida-agriculture.com/news/10-30-09.htm>

⁶ <http://www.doacs.state.fl.us/press/2009/12092009.html>

- Providing advice on administering the order to the DACS;
- Conducting citrus research; and
- Performing duties assigned by the DACS.

The foundation's board of trustees is to be composed of 13 members, including 10 citrus growers, two representatives from the University of Florida's Institute of Food and Agricultural Sciences, and one member appointed by the Commissioner of Agriculture.

The bill amends s. 573.118, F.S., to replace the one cent per box cap on the assessment rate on citrus fruit with language limiting the rate to the amount established in the marketing order.

The bill amends s. 581.031, F.S., by removing "citrus diseases," thereby expanding the types of research that may be conducted by the DACS to any research projects recommended by the Citrus Research and Development Foundation, Inc., within the limits of appropriations made specifically for such purpose.

B. SECTION DIRECTORY:

Section 1. Amends s. 193.461, F.S., clarifying that land classified as agricultural retains that classification when offered for sale if the land continues to be used primarily for agricultural purposes and providing the methodology for assessing certain agricultural improvements, structures, or equipment located on agricultural land and used for specified purposes

Section 2: Provides that the revision to s. 193.461(3)(b), F.S., is remedial and clarifying and applies retroactively to all parcels for which a final court order has not been entered.

Section 3: Amends s. 369.20, F.S., providing that the FWCC may enter into agreement with the DEP to ensure uniform regulation of pesticides applied to the waters of the state.

Section 4: Amends s. 403.088, F.S., providing the DEP with clear authority to develop and implement a general permit to allow application of pesticides for the control of insects, aquatic weeds, algae, or other pests; requiring the DEP to enter into agreements with the DACS and the FWCC.

Section 5: Amends s. 487.163, F.S., requiring the DACS to enter into an agreement with the DEP to ensure the uniform regulation of pesticides applied to waters of the state.

Section 6: Amends s. 573.112, F.S., requiring the Citrus Research and Development Foundation to provide advice to the DACS with respect to citrus research marketing orders, conduct citrus research, and perform other duties assigned by the DACS.

Section 7: Amends s. 573.118, F.S., providing for the deposit of certain agricultural assessments and revising the cap on the assessment rate on citrus fruit.

Section 8: Amends s. 581.031, F.S., expanding the type of research projects that may be conducted by the DACS.

Section 9: Amends s. 601.07, F.S., establishing that the location of the executive offices of the Department of Citrus are to be maintained in Bartow.

Section 10: Provides that the Department of Agriculture and Consumer Services must meet with representatives of the state's pest control industry and submit a report to the Legislature by January 1, 2011, recommending amendments to ch. 482, F.S., that provide for disciplinary action to be taken against licensees who violate certain laws or rules pertaining to pesticide use.

Section 11: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill replaces the one cent per box cap on the assessment rate on citrus fruit with language limiting the rate to the amount established in the marketing order to be deposited in the appropriate trust fund and used by that entity. If the rate is set at the maximum of three cents per box, approximately \$3,000,000 would be deposited into the appropriate trust fund. *(This fiscal impact assumes the bill took effect July 1, 2010)*

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Negative and indeterminate. See fiscal comments.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the DACS, the citrus industry will have to increase the assessment to the producers in order to generate additional funds for citrus research. The industry voted, by a referendum conducted (November 16, 2009) for the self-imposed assessment. If the rate of assessment is fixed at the maximum rate established in the marketing order, it is estimated that the increase from one cent to three cents in the assessment cap would impact the citrus growers by approximately \$3,000,000 per year. *(This fiscal impact assumes the bill took effect July 1, 2010)*

D. FISCAL COMMENTS:

There are pending cases in Nassau and Bradford counties that may be affected by this legislation. If property appraisers lose these cases, the fiscal impact may be significant to these counties. The effect this legislation will have on this litigation is unknown. The fiscal impact of the provisions relating to the assessment of agricultural improvements or structures used for horticultural production that provide shade and shelter and improve the quality or conservation of water has not been determined by the Revenue Estimating Conference.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandate provision may apply because the bill may reduce the authority of the counties to raise revenues. It is not known whether the exemption for insignificant fiscal impact (\$1.9 million) is applicable because the magnitude of the impact cannot be determined at this time.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On April 9, 2010, the General Government and Policy Council adopted two amendments and passed the bill as a Committee Substitute.

Amendment 1 removes the reference to the Florida Administrative Code.

Amendment 2 further refines the types of structures or improvements that would be assessed using the income methodology. These structures are those recognized by the Department of Agriculture best management practices.

On March 26, 2010, the Natural Resources Appropriations Committee adopted three amendments and passed the bill as a Committee Substitute.

Amendment 1 provides that agricultural improvements, structures, or equipment on agricultural land used as a natural conservation or best management practices shall be assessed the same tax assessment as those already recognized for irrigation systems or waste containment structures of dairy or poultry farms.

Amendment 2 is technical in nature.

Amendment 3 allows necessary amounts of pesticides to be applied during the time periods that they are needed.

On March 11, 2010, the Agriculture and Natural Resources Policy Committee adopted four amendments and passed the bill as a Committee Substitute.

Amendment 1 amends s. 193.461, F.S., stating that land classified as agricultural retains that classification when offered for sale if the land continues to be used primarily for agricultural purposes. This amendment is remedial and clarifying and applied retroactively to all parcels for which a final court order has not been entered. This amendment also renames the bill, "Relating to Agriculture."

Amendment 2 establishes Bartow as the location for the executive office of the Department of Citrus.

Amendment 3 corrects the name from the Florida Citrus Research Production Advisory Council, to the Citrus Research and Development Foundation, Inc.

Amendment 4 amends s. 403.088, F.S., providing that the Fish and Wildlife Commission may enter into agreement with the Department of Environmental Protection to ensure uniform regulation of pesticides applied to the waters of the state.

On April 23, 2010, the House of Representatives adopted two floor amendments.

The first floor amendment provided that structures or improvements used in horticulture production for frost or freeze protection, which structures are consistent with the Department of Agriculture and Consumers Services' (DACS) adopted interim measures or best management practices, shall be assessed by the methodology required for the assessment of land used for agricultural purposes.

The second floor amendment required the Department of Agriculture and Consumers Services to meet with representatives of the state's pest control industry and submit a report to the Legislature by January 1, 2011, recommending amendments to ch. 482, F.S., that provide for disciplinary action to be taken against licensees who violate laws or rules pertaining to:

- The pretreatment of soil to protect newly constructed homes;
- Pest control at sensitive facilities such as schools and nursing homes; and
- The fumigation of existing homes for protection against termite damage.

The report can also address other issues of concern to the DACS and to members of the industry, such as:

- Changes to requirements for professional liability insurance coverage or the amount of bond required;
- Duties and responsibilities of a certified operator;
- Issuance of a centralized pest control service center license; and
- Limited certification for commercial wildlife management personnel.